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Attorneys for Defendant David Harbour

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

United States of America,  
  
Plaintiff,

vs.

David Allen Harbour,  
  
Defendant.

Case No. 2:19-cr-00898-DLR (DMF)

**DEFENDANT DAVID A.**  
**HARBOUR'S SUPPLEMENTAL**  
**REQUESTED JURY**  
**INSTRUCTIONS**

**Non-Model Instruction No. 3**  
**No Proof of Regulatory**  
**Regulatory Violations**

You have heard reference at times during the trial to federal regulations enforced by Federal Trade Commission ("FTC") and the Securities Exchange Commission ("SEC"). While, in and of itself, a violation of these regulations, principles, standards, or guidelines does not establish a violation of the criminal law, in this case, there was no evidence introduced by the government that any charges were brought against Mr. Harbour by either the FTC or the SEC. As a result, you are not permitted to consider any evidence of regulatory violations involving Mr. Harbour in determining the charges brought against him by the government.

*Authority: United States v. Hussain*, No. 16-CR-00462-CRB, Dkt. 374 (N.D. Cal. Apr. 24, 2018); *United States v. Reyes*, No. 06-CR-00556-CRB, Dkt. 524-N.D. Cal. July 25, 2007)

**Non-Model Instruction No. 4**

**Ponzi Scheme Defined**

You have heard the government characterize the conduct of the Defendant as a Ponzi Scheme. A Ponzi Scheme is defined as follows:

First, deposits were made by investors;

Second, the Defendant conducted little or no legitimate business operations;

Third, the purported business operation of the Debtor produced little or no profits or earnings; and

Fourth, the source of payments to investors was from cash infused by new investors.

*Gowan v. Amaranth Advisors L.L.C. (In re Dreier LLP)*, Adv. P. No. 10–03493, 2014 WL 47774, at \*9 (Bankr. S.D.N.Y. Jan. 3, 2014) (citation omitted). *See also, Eberhard v. Marcu*, 530 F.3d 122, 132 n. 7 (2d Cir. 2008); *accord In re BLMIS*, 654 F.3d 229, 232 (2d Cir. 2011) (“Net Equity Decision ”), cert. denied, — U.S. —, 133 S. Ct. 25 (2012); *see United States v. Moloney*, 287 F.3d 236, 242 (2d Cir.)

The language and the citations are drawn from the government’s Motion in Limine to Determine the Admissibility of Certain Evidence, Doc. 485, 12/20/2022, p. 17-18.

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3 RESPECTFULLY SUBMITTED this \_\_\_\_\_ day of February 2023.

4  
5 CHRISTIAN DICHTER & SLUGA, P.C.

6 By: /s/

7 Stephen M. Dichter

8 Justin R. Vanderveer

9 2800 North Central Avenue, Suite 860

10 Phoenix, Arizona 85004

11 Attorneys for Defendant David A. Harbour

12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on February \_\_\_\_, 2023 I electronically transmitted the  
14 attached document to the Clerk's Office using the CM/ECF system for filing and for  
15 transmittal of Notice of Electronic Filing to the following CM/ECF registrants:

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24  
25 /s/ Yvonne Canez  
26  
27  
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